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Torture and other cruel, inhuman or degrading treatment or punishment

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, submitted in accordance with Assembly resolution 70/146.

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Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Summary

The Special Rapporteur elaborates on the legal, ethical, scientific and practical arguments against the use of torture, other ill-treatment and coercive methods during interviews of suspects, victims, witnesses and other persons in various investigative contexts. He advocates the development of a universal protocol identifying a set of standards for non-coercive interviewing methods and procedural safeguards that ought, as a matter of law and policy, to be applied at a minimum to all interviews by law enforcement officials, military and intelligence personnel and other bodies with investigative mandates.

I. Activities of the mandate holder

1. The Special Rapporteur conducted a country visit to Mauritania from 25 January to 3 February 2016 and, together with the Special Rapporteur on the independence of judges and lawyers, a country visit to Sri Lanka from 29 April to 7 May.

2. During the week of 7 March, the Special Rapporteur presented several reports to the Human Rights Council, participated in side events and held bilateral meetings with several permanent missions and civil society organizations.

3. On 19 April, the Special Rapporteur appeared before the Senate in Mexico City and met parliamentarians and officials from the Ministry of Foreign Affairs to discuss legislation on torture.

4. On 7 and 8 July, the Special Rapporteur held expert consultations on the topic of the present report, with the support of the Anti-Torture Initiative.

II. Universal protocol for interviews[1]

A. Torture, ill-treatment and coercion during interviews

5. Law enforcement officials[2] and other investigative bodies, including intelligence and military services, play a vital role in serving communities, preventing crime and protecting human rights. In performing their duties, they are obliged to respect and protect the inherent dignity and physical and mental integrity of all persons under questioning, including suspects, witnesses and victims (see Human Rights Council resolution 31/31).

6. The right to be free from torture and ill-treatment is a rule of customary international law and a peremptory *jus cogens* norm of international law applying to all States. It is codified in international and regional treaties and national legal systems globally; it constitutes a grave breach of the Geneva Conventions of 1949 and a violation of common article 3 and of customary international humanitarian law; and it can constitute a crime against humanity or an act of genocide under international criminal law. The obligation to prevent torture and ill-treatment applies

[1] The Special Rapporteur recognizes that in some jurisdictions the word "interrogation" is used to refer to interviewing during criminal investigations and employed in a neutral manner that does not necessarily connote coercion. In the present report, the word "interview" has been chosen deliberately, given that it encompasses the questioning of suspects, witnesses and victims alike. The word further emphasizes the non-adversarial, rapport-based nature of the interview with a suspect, one that first and foremost attempts to make the presumption of innocence operational and suggests a model of criminal investigation that is more likely to be effective in preventing any form of coercion and also be more effective in solving crimes. Throughout the report, the words "interview" and "questioning" are used interchangeably.

[2] The Special Rapporteur uses the term "law enforcement" to refer to traditional law enforcement agencies mandated with police powers, such as arrest, questioning and detention. In jurisdictions in which police powers are also exercised by military or intelligence services, the term "law enforcement officials" is understood as being inclusive of military and intelligence personnel. The Special Rapporteur explicitly references military and intelligence agencies when they wield powers of apprehension, detention and questioning outside the national law enforcement context, such as during military or intelligence operations, including in armed conflict.

at all times, including during the investigation of serious crimes and in situations of armed conflict, and is complemented by a range of attendant standards and procedural safeguards.

7. Nevertheless, the sophisticated normative frameworks in place often do not translate into a reduction in practices of torture, ill-treatment or coercion during questioning, which are frequently used by State agents worldwide during law enforcement investigations of common and serious criminal offences, during military and intelligence operations and during armed conflict.

8. Persons interviewed by authorities during investigations may be confronted with the entire repressive machinery of society. Questioning, in particular of suspects, is inherently associated with risks of intimidation, coercion and mistreatment. The risks are heightened for vulnerable persons and for persons questioned in detention. This holds particularly true during apprehension and the early stages of custody, when the authorities exerting control over the fact and conditions of detention and conducting the investigation are the same.

9. The persistent use of unlawful and improper interviewing practices is triggered by a range of local factors, including the erroneous assumption that mistreatment and coercion are necessary to obtain confessions or elicit information. The misconception that torture is a "necessary evil" is especially prevalent during interviews relating to organized crime and national security offences. In the anti-terrorism context, Governments resort to "ticking bomb scenarios" in attempts to justify the use of abusive and unlawful interviewing practices, implicitly challenging the absolute and non-derogable nature of the torture prohibition under any circumstances. While some have sought to proffer faulty legal interpretations to support the use of torture, a more common policy option has been to refute that certain practices amount to torture or ill-treatment under international law.

10. In many countries, detainees are mistreated during investigations of common crimes. Pressure from politicians, supervisors, judges and prosecutors to solve high volumes of cases and inadequate measures of police performance, including systems of appraisal focusing only on the number of crimes "solved" or convictions, create perverse incentives for arrests and mistreatment. A lack of forensic methodology, training in modern criminal investigation techniques and equipment often also creates the perception that torture, ill-treatment and coercion are the easiest and swiftest ways to elicit confessions or other information.

11. Serious concerns arise in legal systems that place a premium on confessions to establish criminal responsibility. While the admission and realization of guilt can be significant to offenders' rehabilitation and reintegration, the ability to convict suspects solely on the basis of confessions without further corroborating evidence encourages the use of physical or psychological mistreatment or coercion. Similarly, legal systems that de jure establish that extrajudicial confessions are probative of guilt only if corroborated by other evidence nevertheless provide de facto incentives for mistreatment.

12. In some jurisdictions, structural and resource deficiencies in the criminal justice system create conditions conducive to the proliferation of mistreatment. When Governments do not invest sufficient resources in the administration of justice, judges, prosecutors and law enforcement officials lack the necessary training and are overworked, underpaid and more prone to corruption (see

A/HRC/13/39/Add.5). Under such circumstances, it is not uncommon for law enforcement officials to resort to torture or threats of torture to extract money from detainees or their relatives during investigations.

13. Mistreatment is also regularly employed as a means of punishment or reprisals, often owing to the institutional culture of States' law enforcement agencies. In such cases, torture is part of a cultivated culture of fear and used as an instrument of power to exert social control over particular groups or segments of the population.

14. Another recurrent problem is the frequent absence or denial of fundamental procedural safeguards designed to prevent torture and other ill-treatment during questioning. Although international law mandates fundamental safeguards designed to counter the risks of mistreatment in custody,[3] national legislation is often deficient. In cases in which procedural safeguards are enshrined in law, their effective implementation typically remains a major challenge. It is particularly concerning that legal loopholes are frequently exploited to circumvent the rights and safeguards of persons during questioning, giving rise to torture and ill-treatment.

15. The perpetuation of unlawful practices is exacerbated by an absence of determination and commitment to eradicate torture at all times and in all circumstances; a lack of adequate education and training for law enforcement, intelligence, military and medical personnel; deficient complaint, monitoring and investigative mechanisms, and inadequate responses to allegations and complaints; interference with the ability of national monitoring bodies and civil society to gain access to detention places, document violations and represent victims of abuse; and cultures of impunity and pervasive failure to ensure accountability and provide adequate remedies.

B. Arguments against the use of torture, ill-treatment and coercion during interviews

16. The absolute and non-derogable nature of the torture prohibition in international law reflects the exceptional gravity of the crime, which constitutes an immoral affront to human dignity that can never be justified. Torture dehumanizes and denies the inherent dignity of victims by treating their bodies and minds as means to achieving particular ends. It constitutes one of the most extreme forms of suffering that a person can inflict on another and often results in lifelong consequences for victims.

17. History and science offer no body of data on the strategic effectiveness of harsh questioning techniques.[4] The popular belief that torture is an effective way of discovering the truth — or more effective than non-coercive interviewing methods — is perpetuated by misleading depictions in popular media. The use of torture and

[3] For example, the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), adopted by the General Assembly in its resolution 70/175, the Code of Conduct for Law Enforcement Officials, adopted by the Assembly in its resolution 34/169, and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, approved by the Assembly in its resolution 43/173.

[4] See Darius Rejali, *Torture and Democracy* (Princeton, New Jersey, Princeton University Press, 2007).

ill-treatment has in fact long been associated with high risks of obtaining false confessions and unreliable information. It is well established that victims will say anything — regardless of whether it is true — to appease their tormentors and make the pain stop (see European Court of Human Rights, *Othman (Abu Qatada) v. the United Kingdom*). It follows that the perpetrators cannot reliably assess whether information elicited through mistreatment — if any — is truthful, false or complete. Research on lie detection reveals that trained interviewers can differentiate fabrications from truths at a rate only slightly better than chance (slightly above 50 per cent). Those employing torture and ill-treatment during interviews tend to misread victims and fail to recognize the truth, often perpetuating a vicious cycle of mistreatment and fabrications.[5]

18. Behavioural and brain sciences underlie the recognition that mistreatment and coercion are unreliable and counterproductive means to elicit accurate information. Torture and ill-treatment harm those areas of the brain associated with memory, mood and general cognitive function. Depending on their severity, chronicity and type, associated stressors typically impair encoding, consolidation and retrieval of memories, especially where practices such as repeated suffocation, extended sleep deprivation and caloric restriction are used in combination. Such practices weaken, disorient and confuse subjects, distort their sense of time and render them prone to fabricate memories, even if they are otherwise willing to answer questions.[6] They are also detrimental to the establishment of trust and rapport, and compromise the interviewer's ability to understand a person's values, motivations and knowledge — elements required for a successful interview.

19. Irrefutable evidence from the criminal justice system demonstrates that coercive methods of questioning, even when not amounting to torture, produce false confessions. Coercion can overcome one's will to the point where he or she may doubt his or her own memory, believe accusations made against him or her or confess owing to a conviction that no one will believe his or her innocence (see Supreme Court of Canada, *R. v. Oickle*). DNA exonerations in some jurisdictions reveal that more than one fourth of wrongfully convicted persons made a false confession or incriminating statement.[7] Studies reveal that the more coercive the questioning, the higher the probability that it will result in a false confession, and, in addition, that criminal defendants who falsely confess and plead "not guilty" at trial are nonetheless convicted 81 per cent of the time, often on the basis of their confessions alone.[8]

20. Reliance on inaccurate information obtained through mistreatment has adverse operational consequences, wasting resources better applied to enhance investigative

[5] The United States Senate Select Committee on Intelligence, in its study on the rendition, detention and interrogation programme carried out by the Central Intelligence Agency, concluded that the use of what were termed "enhanced interrogation techniques" was an ineffective means of eliciting intelligence or gaining cooperation from detainees.

[6] See Shane O'Mara, *Why Torture Doesn't Work: The Neuroscience of Interrogation* (Cambridge, Massachusetts, Harvard University Press, 2015).

[7] See Innocence Project, "False confessions or admissions", 2016. Available from www.innocenceproject.org/causes/false-confessions-admissions/.

[8] See Mark A. Costanzo and Ellen Gerrity, "The effects and effectiveness of using torture as an interrogation device: using research to inform the policy debate", *Social Issues and Policy Review*, vol. 3, No. 1 (2009).

capacity or pursue other leads. Intentional misinformation also sends investigators on distracting wild goose chases.

21. Torture, ill-treatment and coercion have devastating long-term consequences for individuals, institutions and society as a whole, causing serious and long-lasting harm to victims and often injuring the humanity and mental health of perpetrators. Such practices corrupt the cultures of institutions that perpetrate, participate in, assist in or overlook them. They debase societies that endorse or accept their use, erode public trust in law enforcement and damage its relationships with communities, with negative consequences for future investigations.

22. Political decisions to resort to torture or ill-treatment and the failure to prevent its use jeopardize States' international cooperation and harm their reputations, moral authority and legacies. Ultimately, torture only breeds more crime by fuelling hatred and a desire for vengeance against the perpetrators. Its use in Northern Ireland in the 1970s and during the so-called "war on terror" has served as a recruiting tool for the groups against which it was perpetrated.

C. Universal protocol for non-coercive, ethically sound, evidence-based and empirically founded interviewing practices

23. Professional interviewers repeatedly emphasize that interviews are conducted much more effectively without resort to torture, ill-treatment or coercion. The Special Rapporteur welcomes strides made by some States in fashioning and implementing human rights-based standards and guidelines for investigations and non-coercive interviewing practices, but is concerned that mistreatment and coercive questioning remain prevalent in many jurisdictions. Some progress notwithstanding, State practice most often ignores the relevant normative frameworks and fails to heed key due process guarantees and procedural safeguards designed to combat abuses committed during investigations and questioning that are codified in national legislation.

24. Noting the growing attention to and momentum around the issues of investigation, questioning and custody practices at the international, regional and national levels (see Human Rights Council resolution 31/31), the Special Rapporteur identifies an auspicious opportunity to promote the development of much-needed standards and guidelines on these fundamental practices, with the aim of assisting States to meet their fundamental legal obligations to prohibit and prevent torture and ill-treatment. He takes particular note of the successful recent revisions of the Standard Minimum Rules for the Treatment of Prisoners (now known as the Nelson Mandela Rules) and the Model Protocol for a Legal Investigation of Extra-legal, Arbitrary and Summary Executions (Minnesota Protocol) and suggests the organization of a broad public consultation by States and other relevant stakeholders to engage in dialogue on the development of a universal protocol for interviews that is grounded in fundamental principles of international human rights law, including the prohibition of torture, ill-treatment and coercion.

25. Because the principal safeguard against mistreatment during questioning is the interviewing methodology itself, the protocol must outline the guiding principles of an interviewing model that fully respects this prohibition. The protocol must design a model that is non-coercive, ethically sound, evidence-based and research-based and empirically founded. It should champion a culture of human rights compliance,

the highest standards of professionalism and the use of fair and ethical practices that demonstrably enhance the effectiveness of interviews and the elicitation of accurate and reliable information. The protocol must also promote minimum standards and procedural safeguards designed to prevent improper interviewing practices in different investigative contexts. By drawing upon scientific research and documented good practices, the protocol will enhance human rights compliance, improve effective policing and help to keep societies safer.

26. The protocol must also emphasize States' obligations to take measures to incorporate relevant standards into their national systems, promote its use across national institutions and provide training to relevant personnel, including prosecutors, defence lawyers, judges, law enforcement, intelligence and military officials and medical professionals.

27. The adoption and implementation of the protocol in national systems will assist States in fulfilling key legal obligations relating to the questioning of persons and the prohibition of torture and ill-treatment, by expounding and refining the standards[9] that States must incorporate into national law and practice with regard to the conduct of interviews, and when systematically reviewing their interviewing rules, instructions, methods and practices, as mandated under international human rights law (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 11).

Scope of the protocol

28. While recognizing that States face an array of challenges in successfully combating and preventing mistreatment during questioning, the Special Rapporteur insists that the future protocol be of universal application. Except for those lawful limitations demonstrably required by the fact of detention and investigation, persons questioned and/or deprived of their liberty unequivocally retain their non-derogable human rights. The prohibition of torture or ill-treatment and the principle of humane treatment of detainees are fundamental and universally applicable rules and cannot be dependent on the material resources available to States (see A/68/295). It follows that the set of minimum standards identified in the protocol should be applied, as a matter of law and policy, to interviews conducted by all agents of all States.

29. Many safeguards against coercive and abusive questioning techniques can be implemented with limited financial expenditure, in a cost-effective and sustainable manner. Where necessary, however, the protocol may identify additional approaches whereby States with limited material resources can guarantee effective and meaningful implementation and ensure adequate protection against abuses.

30. The protocol must also acknowledge that the successful eradication of torture, ill-treatment and coercion may require greater concerted efforts in some States, especially in jurisdictions in which such practices are routine or systematic. In such cases, it should underline States' obligations to ensure the proper functioning of their criminal justice system, in particular by taking effective measures to combat

[9] For example, Human Rights Council, resolution 31/31; European Court of Human Rights, *Beortegui Martinez v. Spain*; European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, second general report on the activities of the Committee (CPT/Inf (92) 3); and Inter-American Commission on Human Rights, report on the human rights of persons deprived of liberty in the Americas (OEA/Ser.L/V/II.Doc.64).

corruption and by providing for adequate selection, training and remuneration of law enforcement and judicial personnel (see Human Rights Council resolution 31/31). Such steps are indispensable to bringing about positive changes in the institutional culture and the mindset of law enforcement and other officials.

31. The protocol must apply to interviews conducted by law enforcement and other investigative bodies such as intelligence and military services and administrative bodies, during counter-terrorism operations and in situations of armed conflict, including extraterritorially. In this regard, the Special Rapporteur is concerned that in some jurisdictions intelligence services have been empowered to apprehend, detain and question persons in connection with national security offences, as a way to circumvent legal and procedural safeguards applicable to traditional law enforcement agencies — a practice that has at times lamentably enabled the perpetration of egregious acts of torture and ill-treatment. The protocol should emphasize that there are no legitimate reasons for granting intelligence agencies such powers duplicating those held by traditional law enforcement bodies. Intelligence agencies mandated by law to exercise such powers must comply fully with international human rights standards, including those pertaining to the rights to liberty, fair trial, the use of torture-tainted information and the absolute prohibition of torture and ill-treatment (see A/HRC/10/3; A/HRC/14/46; and European Court of Human Rights, *Öcalan v. Turkey*). Intelligence services entrusted with police powers must comply with rules applicable to the conduct of interviews in the criminal justice system. The above rationale also applies where military services or other investigative bodies are entrusted with police powers in the national law enforcement context.

32. The Special Rapporteur is concerned by the deprivation of liberty of persons for the sole purpose of questioning, a practice that entails severe risks of torture and ill-treatment. Law enforcement, military and intelligence agencies cannot be permitted to detain persons without probable cause and for the sole purpose of gathering information or intelligence, including in armed conflict (see A/HRC/14/46 and A/HRC/10/3). The apprehension and detention of individuals in the absence of reasonable suspicion that they have committed or are about to commit a criminal offence, or of other internationally accepted lawful grounds for detention, are prohibited. Administrative detention outside armed conflict is prohibited save the "most exceptional circumstances"; when justified by a "present, direct and imperative threat" that cannot be addressed by alternative measures, it must be accompanied by adequate safeguards, last no longer than "absolutely necessary" and be subject to prompt and regular review. When authorized, administrative detention must be ordered, implemented and supervised by judicial authorities. Standards and procedural safeguards applicable to interviews of suspects in the criminal justice systems must equally and unambiguously apply, as a matter of law and policy, to the questioning of persons held in administrative or preventive detention outside of armed conflict (see Human Rights Committee, general comment No. 35 (2014) on liberty and security of person (article 9 of the International Covenant on Civil and Political Rights); and A/56/156).

33. The protection offered by international human rights law remains applicable during armed conflict and supplements that offered by international humanitarian

law.[10] The humane treatment requirements under the Convention against Torture (and customary international law) and international humanitarian law are substantially equivalent; the obligations relating to the prohibition and prevention of torture and ill-treatment in international and non-international armed conflicts are the same, with common article 3 of the Geneva Conventions constituting a minimum baseline of protection applicable at all times (see A/70/303). Most guiding principles, standards and procedural safeguards applicable to interviews conducted in the traditional law enforcement context must be applicable, as a matter of law or of best practice, during interviews conducted in times of war.

34. The standards and procedural safeguards mentioned herein must be guaranteed in law and practice during all interviews by law enforcement agents and other investigative bodies, including intelligence and military services, and must also apply to private contractors and all persons who act, de jure or de facto, on behalf of, in conjunction with or at the behest of the State, under its direction or control or otherwise under colour of law (see Committee against Torture, general comment No. 2 (2008) on the implementation of article 2 by States parties).

III. Elements of a universal protocol for interviews

A. Alternative model of investigative interviewing

1. Legal framework against coercive questioning and techniques

35. The protocol must provide detailed guidance on the purpose and parameters of a human rights-compliant interviewing model that promotes a human rights-based approach, enhances the professionalism and effectiveness of law enforcement and other State agents and is premised on the aim of ensuring that all interviews are conducted without resort to torture, ill-treatment or coercion.

36. Persons interviewed in connection with their alleged role in a criminal offence must not be compelled to testify against themselves or to confess guilt (International Covenant on Civil and Political Rights, art. 14 (3) (g)) and investigating authorities may not resort to "any direct or indirect physical or undue psychological pressure" to induce confessions (see Human Rights Committee, general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial (article 14 of the International Covenant on Civil and Political Rights)). Accordingly, the prohibition of torture and ill-treatment is complemented by the prohibition of any form of coercion during the questioning of suspects. The Rome Statute of the International Criminal Court likewise prohibits "any form of coercion, duress or threat" during investigations (art. 55). The protocol must expressly recognize this prohibition and extend it to interviews of witnesses, victims and other persons in the criminal justice system.

[10] Accordingly, civilian internment during both international and non-international armed conflict must remain exceptional, limited in time and accompanied by procedural safeguards akin to those described in paragraph 29 (see Human Rights Committee, general comment No. 35 (2014) on liberty and security of person (article 9 of the International Covenant on Civil and Political Rights); and Geneva Convention relative to the Protection of Civilian Persons in Time of War, arts. 42 and 78).

37. As a rule of general application, all States must refrain from using any type of coercion when questioning persons under any form of detention. International law acknowledges the need for special protection for all detained persons, who, during questioning, must not be subjected to violence, threats or practices that impair their capacity of decision or their judgment or force them to confess, incriminate themselves or testify against another person (Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, principle 21).

38. In situations of armed conflict, the use of torture or any other form of coercion against prisoners of war to extract any type of information from them is strictly prohibited. Those who refuse to provide information cannot "be threatened, insulted or exposed to unpleasant or disadvantageous treatment of any kind" (Geneva Convention relative to the Treatment of Prisoners of War, art. 17). Physical or moral coercion against protected persons for any purpose, in particular to extract information from them or from third parties, is also forbidden (Geneva Convention relative to the Protection of Civilian Persons in Time of War, art. 31). In situations in which persons face criminal prosecutions, the Geneva Conventions and Additional Protocols I and II thereto also provide for the right not to be compelled to testify against themselves or to confess guilt, both during international and non-international armed conflicts (Geneva Convention relative to the Treatment of Prisoners of War, art. 99; Protocol I, art. 75; and Protocol II, art. 6). This must also be understood as the absence of any moral or physical coercion in order to induce them to confess. In situations other than the aforementioned, the prohibition of coercion during questioning should apply as a matter of policy, irrespective of the international or non-international character of the conflict and of the status of the person questioned.

39. Accusatorial models of questioning tend to be confession driven and characterized by a de facto presumption of guilt and the use of confrontation and psychological manipulation. Common manipulative techniques are coercive in nature and likely to impair the free will, judgment and memory of interviewees. Threats, inducements, misleading practices, protracted or suggestive questioning and the use of drugs or hypnosis are examples of problematic practices. Demeaning or condescending comments or accusations based on individual qualities or cultural identities are also of concern.

40. Inducements may consist of promises of immunity or lighter sentences in exchange for confessions. Misleading practices include the use of trickery or deception, including by presenting false evidence, confronting persons with false witnesses or leading one to believe that his or her co-defendants have confessed. These methods are improper because they ultimately deprive a person of his or her freedom of decision through the use of false representations (see E/CN.4/813 and Corr.1). Techniques designed to minimize or maximize the suspect's perceptions of responsibility or blame, including implicit promises of leniency and presentation of false evidence, claims or insinuations about the existence of evidence against him or her, also increase the likelihood of false confessions.

41. Protracted or suggestive interviews, wherein persons are questioned for extended periods without sufficient rest or asked confusing, ambiguous or leading questions with great intensity (see ibid.), are likely to become coercive and

constitute ill-treatment and may induce sleep deprivation, impaired decision-making and a desire to admit anything in order to bring the questioning to an end.[11]

42. Coercive techniques, even when not amounting to torture or ill-treatment, are means to the same ends, administered by State agents to confirm their presumption of guilt. They are likely to produce faulty information and give rise to conditions conducive to the use of torture or ill-treatment. Strengthening protection against coercive questioning methods and championing an interviewing model based on the principle of presumption of innocence are accordingly key to preventing mistreatment during questioning and enhancing authorities' effectiveness.

43. It is well established that the term "cruel, inhuman or degrading treatment or punishment" must be interpreted to extend the widest possible protection against abuses (see the Body of Principles). When persons are deprived of liberty, the prohibition of torture and ill-treatment overlaps with and is supplemented by the principle of humane treatment of detainees (see A/68/295). The European Court of Human Rights, in *Bouyid v. Belgium*, has highlighted the inherent link between concepts of degrading treatment or punishment and human dignity, finding that treatment that "humiliates or debases an individual, show[s] a lack of respect for or diminish[es] his or her human dignity, or arouses feelings of fear, anguish or inferiority capable of breaking an individual's moral and physical resistance" may be characterized as degrading. Any act by law enforcement that diminishes a person's human dignity, including the use of physical force when not strictly necessitated by his or her conduct, violates the prohibition of torture and ill-treatment.

44. Depending on their degree, severity, chronicity and type, undue psychological pressure and manipulative practices may themselves amount to inhuman or degrading treatment. This may be the case, among others, when certain techniques are used in combination, over a lengthy period or against vulnerable persons, including children, persons with psychosocial disabilities, persons who do not understand or adequately speak the language of the interviewing officers and other persons who may be particularly sensitive to coercion owing to their specific needs or physical or emotional development.

45. International and regional human rights mechanisms have to date developed an extensive body of jurisprudence on practices that amount to physical or psychological torture or ill-treatment, including but not limited to punching, kicking, beatings, electrocution, forms of suffocation, burns, use of firearms, mock executions, threats of reprisals against relatives, death threats, restraints in very painful conditions, rape, sexual abuse and humiliation, sleep deprivation, prolonged stress positions, prolonged solitary confinement, incommunicado detention, sensory deprivation, exposure to extreme temperatures or loud music for prolonged periods, dietary adjustments, blindfolding and hooding during questioning, prolonged questioning sessions, removal of clothing, deprivation of all comfort and religious items and exploitation of phobias during questioning (see A/HRC/13/39/Add.5; A/52/44; CCPR/C/USA/CO/3/Rev.1; CAT/C/USA/CO/2; and CAT/C/KAZ/CO/3). Deplorably, such illegal methods have often been combined with poor conditions of detention — which can alone amount to cruel, inhuman or degrading treatment in themselves — to exert additional psychological pressure on detainees to reveal

[11] For example, Christian Meissner, Christopher E. Kelly and Skye A. Woestehoff, "Improving the effectiveness of suspect interrogations", *Annual Review of Law and Social Science*, vol. 11 (2015).

information. The Special Rapporteur recalls that the physical environment and conditions during questioning must be adequate, humane and free from intimidation, so as not to run afoul of the prohibition of torture or ill-treatment.

46. The Special Rapporteur expresses serious concern about the practice of holding terrorism suspects in solitary confinement or other forms of isolation in order to break their resistance to questioning. The imposition of solitary confinement of any duration for the purpose of pressuring persons to confess, provide information or admit guilt violates the prohibition of torture (see A/66/268). Practices such as the "separation" technique described in appendix M to the United States Army field manual on human intelligence collector operations, whereby detainees are isolated and prevented from communicating with anyone except medical, detention and intelligence personnel, in an attempt to decrease their resistance to questioning, are coercive tactics and violate international law.

2. Guiding principles of investigative interviewing

47. Encouragingly, some States have moved away from accusatorial, manipulative and confession-driven interviewing models with a view to increasing accurate and reliable information and minimizing the risks of unreliable information and miscarriages of justice. The essence of an alternative information-gathering model was first captured by the PEACE[12] model of interviewing adopted in 1992 in England and Wales. Investigative interviewing models fashioned after that model were subsequently adopted by other jurisdictions and the International Criminal Court. Initially developed for criminal investigations, models of investigative interviewing can provide positive guidance for the protocol and be applied in a wide range of investigative contexts, including during intelligence and military operations.

48. The investigative interviewing model comprises a number of essential elements that are key to the prevention of mistreatment and coercion and help to guarantee effectiveness. Interviewers must, in particular, seek to obtain accurate and reliable information in the pursuit of truth; gather all available evidence pertinent to a case before beginning interviews; prepare and plan interviews based on that evidence; maintain a professional, fair and respectful attitude during questioning; establish and maintain a rapport with the interviewee; allow the interviewee to give his or her free and uninterrupted account of the events; use open-ended questions and active listening; scrutinize the interviewee's account and analyse the information obtained against previously available information or evidence; and evaluate each interview with a view to learning and developing additional skills. The remainder of the present section provides an overview of some of these elements, on which the protocol should provide detailed guidance.

49. The protocol must reiterate the precise aim of questioning, namely to obtain accurate and reliable information in order to discover the truth of all relevant facts about matters under investigation. The aim of interviews must not be to elicit confessions or other information reinforcing presumptions of guilt or other assumptions held by officers.[13] Interviews are conducted to make the presumption of

[12] The five steps of the PEACE model are preparation and planning; engage and explain; account; closure; and evaluation.

[13] See the twelfth report on its activities of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT/Inf (2002) 15).

innocence operational. Officers generate and actively test alternative hypotheses through systematic preparation, empathetic rapport-building, open-ended questions, active listening, strategic probing and disclosure of potential evidence. Such interviews are far more effective and compliant with human rights.

50. Objectivity, impartiality and fairness are critical components of investigative interviews. They require officers to keep an open mind, even when the evidence against a person is strong. An objective, impartial and fair interviewing process will reduce the risks of resorting to confession-oriented techniques or coercion and of eliciting false admissions or faulty intelligence. In criminal investigations, a fair police process will form the preparatory basis for a fair trial.[14] Officers must remain professional and not allow their prejudices, preconceptions or emotions to affect their performance during interviews.

51. Systematic and solid preparation increases the quality and likelihood of successful interviews. Conversely, insufficient preparation is bound to cause setbacks and creates risks that agents will resort to pressure or physical coercion to elicit information or confessions. Adequate preparation requires full knowledge of and compliance with applicable rules of procedure governing the conduct of interviews. To conduct the most effective interview possible, officers should, among other things, have clear knowledge and understanding of all information pertinent to the case, be fully cognizant of the legal definition of the offence under investigation and identify all potential evidence in the case file and every possible explanation of its origin.[15] The preparation of a strategy and interview structure designed to best elicit information is also essential, as is the ability to remain flexible throughout the interview.

52. The development and maintenance of rapport is also a crucial determinant of effective non-coercive interviews. Rapport can help to reduce the interviewee's anxiety, anger or distress, while increasing the likelihood of obtaining more complete and reliable information. Rapport-building techniques must not be used for the purposes of manipulation or to exert undue pressure to induce confessions, which would be incompatible with the purpose and spirit of the investigative interviewing model. The protocol should clearly set out the duty of interviewers to maintain a professional attitude and refrain from using any form of coercion during the entire interview process. It must also emphasize that interviewers ought to obtain the cooperation of persons questioned, rather than to demonstrate their authority or gain control over them, manipulate them or force them to comply with their wishes.

53. It is recommended that interviewers begin each topic by asking open-ended questions and allow the interviewee to provide a free and uninterrupted account of the events under investigation. Contrary to complex, leading or compound questions, open-ended and neutral questions encourage memory retrieval and are less likely to induce admissions against a person's will, influence his or her account or contaminate his or her memory. Broad and open-ended questions will enable innocent suspects to provide information freely, while preventing guilty suspects from understanding their evidentiary significance.

[14] See the European Code of Police Ethics.

[15] For example, Organization for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights, *Human Rights in Counter-Terrorism Investigations: A Practical Manual for Law Enforcement Officers* (Warsaw, 2013).

54. As a matter of best practice, interviewers are encouraged to proceed, when necessary, with probing questions designed to elicit information that will test all possible alternative explanations identified during the preparation of the interview. Strategic probing and disclosure of potential evidence allows officers to explore the interviewee's account in depth before proceeding to the next topic, helping to ensure that the presumption of innocence is respected while strengthening the case against a guilty suspect by preventing the subsequent fabrication of an alibi.[16] Although interviewers may be persistent with their line of questioning when probing the interviewee's account, questioning must never become unfair or oppressive.

55. The same guiding principles should apply to interviews of witnesses, victims and other persons in the criminal justice system. The protocol must additionally regulate objective, fair, human rights-based, non-coercive and rapport-based intelligence interviews during intelligence and military operations. Research and experienced practitioners agree that ethical information-gathering approaches similar to those employed in the criminal justice system lead to greater information gains and offer a more effective model than coercive intelligence interviewing.

3. Training and change in culture and mindset

56. The questioning of persons is a specialist task that requires specific training in order to be performed successfully and in accordance with the highest standards of professionalism. The protocol must insist on the importance of adequate and regular training for law enforcement and other personnel involved in the questioning of persons (see A/HRC/4/33/Add.3 and CAT/C/USA/CO/2).

57. The training of interviewers encompasses several components, beginning with effective training in international human rights law, including the prohibition of torture, ill-treatment and other form of duress;[17] where applicable, training on the Geneva Conventions should also be provided. Training should include but not be limited to theoretical knowledge about international and national standards and guidelines relating to questioning, in addition to practical information, preparation and practice in the steps of investigative interviews and exercises designed to facilitate skills development. The use of scenario-based exercises and the recording and review of interviews constitute best practices in this respect. References to empirical and scientific evidence on the unreliability and counterproductiveness of torture and coercion will also help to effect the needed change in mindsets and interviewing culture. Underlining the adverse impact of mistreatment on memory retrieval would be especially beneficial. Training should also include awareness-raising activities on effective protection of and adaptation to the specific needs of vulnerable persons.

58. States must further ensure that supervisors, judicial officers, prosecutors and medical personnel are also trained on international standards relating to the prohibition and prevention of torture, human rights-compliant interviewing techniques and the duties to report, effectively document and investigate allegations of torture and ill-treatment. Raising awareness among all personnel directly or

[16] See Ivar A. Fahsing and Asbjorn Rachlew, "Investigative interviewing in the Nordic region", in *International Developments in Investigative Interviewing*, Tom Williamson, Becky Milne and Stephen P. Savage, eds. (Cullompton, United Kingdom, Willan, 2009).

[17] See the report of the Inter-American Commission on Human Rights on the human rights of persons deprived of liberty in the Americas (OEA/Ser.L/V/II.Doc.64).

indirectly involved in the questioning of persons is a necessary step towards changing law enforcement culture, especially in jurisdictions in which mistreatment is routine or systematic, and towards the effective implementation of the torture prohibition. It is also essential for law enforcement commanders and leaders to be made aware of the detrimental strategic impact that torture and ill-treatment have on the establishment and maintenance of their legitimacy within and relationships with communities.

59. The Special Rapporteur underscores the importance of developing corroborating methods of crime investigation, investing in adequate equipment and effectively training investigators on available modern and scientific investigation techniques. These measures can help to facilitate the transition from confession-led to evidence-led investigations and provide surplus information useful to the preparation and conduct of effective interviews, reducing the risk that officers will resort to mistreatment to extract information.

B. Set of standards and procedural safeguards

60. A number of due process guarantees and procedural safeguards guaranteeing the right to justice and fair trial, and against arbitrary detention, are critical and inextricably linked to the prevention of torture and ill-treatment during questioning. Article 14 of the International Covenant on Civil and Political Rights provides guarantees against the use of all forms of direct or indirect physical or psychological pressure by authorities against a suspect for the purposes of obtaining a confession. The rights not to be compelled to testify against oneself or to confess guilt and to be guaranteed counsel and legal aid are particularly crucial. Aside from safeguarding the fundamental human rights of individuals, these measures benefit societies generally, by fostering trust in institutions, promoting the reliability of evidence and facilitating the effectiveness of national judicial processes (see A/HRC/WGAD/2012/40). Similarly, safeguards enshrined in article 9 of the Covenant help to prevent torture by reducing opportunities and incentives for mistreatment and coercion during detention.

61. The Special Rapporteur examines herein several safeguards of key significance to the future protocol, particularly as applicable to persons in detention. The protocol should also consider other scenarios, including the rights of suspects not deprived of liberty, safeguards attendant to informal questioning and additional preventive measures against mistreatment and coercion. The protocol must account for the reality that torture and ill-treatment during arrest or detention can also take place outside the interview room and induce forced confessions during subsequent questioning.

62. Judicial control of detention is a fundamental safeguard for persons deprived of liberty in connection with criminal charges. Persons detained on criminal charges must not be held in facilities under the control of their interviewers or investigators for more time than is legally required to hold a judicial hearing and obtain a judicial warrant of pretrial detention. This period should never exceed 48 hours, save absolutely exceptional and justified circumstances (see general comment No. 35). Suspects must be transferred to a pretrial facility under a different authority immediately thereafter, after which no further unsupervised contact with interviewers or investigators may be permitted (see A/68/295). As a matter of best

practice, States ought to entrust different bodies with separate chains of command with the detention and questioning of persons, to help to protect detainees from mistreatment and reduce the risk of conditions of detention being used to pressure them during questioning. All detainees must be properly registered from the moment of apprehension, a public centralized detention register must be kept and the chain of custody thoroughly documented (see A/HRC/13/39/Add.5).

63. The practice of detaining persons incommunicado and questioning them in unofficial or secret facilities is of grave concern because it exposes individuals to heightened risks of torture. Secret detention amounts to torture or ill-treatment in itself and should be abolished and criminalized under national law. States must ensure that questioning is conducted only at official and accessible facilities, regardless of the form of detention. In the criminal justice system, any evidence obtained from detainees in unofficial places of detention and not confirmed by them during subsequent interviews at official locations ought to be inadmissible in court (see A/56/156).

1. Information on rights

64. Any person arrested or detained must, at the time of deprivation of liberty and before any questioning, be informed of his or her rights and ways to avail himself or herself of those rights (see the Body of Principles). This includes the right to be informed without delay of the reasons — the factual and legal basis — justifying arrest or detention and the right to bring proceedings before the court and obtain appropriate remedies. Persons arrested or detained in connection with criminal charges are entitled to receive prompt information about the charges (see general comment No. 35).

65. Before the beginning of every interview, the information provided must include, at a minimum, the rights to remain silent during questioning; to a lawyer of one's choice and free legal aid where the interests of justice so require; to consult counsel before questioning and to be questioned in the presence of counsel; and to free and effective interpretation and translation if the individual does not understand or adequately speak the language of questioning (see the Rome Statute, art. 55; and European directive 2012/13/EU).

66. Information should be provided to interviewees in a manner that is sensitive to age, gender and culture and corresponds to the needs of vulnerable persons, and in a language, means, mode and format accessible to and understood by them. Means of verification and documentation that this information was provided must be established, whether by way of printed record, audiotape, videotape or witness accounts (see WGAD/CRP.1/2015).

67. The Special Rapporteur recognizes that the content of some procedural rights may vary, to a limited extent, depending on the legal status of the interviewee and the context of questioning. The provision of precise and accurate information on one's status and rights before questioning is therefore doubly critical. Authorities may not interview persons as "witnesses" or under the guise of "informative talks" in order to evade the legal safeguards attendant to the questioning of suspects. Any person who is under a legal obligation to attend and remain at an establishment for questioning must be afforded the same rights as a suspect. When a person becomes a suspect during questioning, the interview must be suspended and begin again only if the interviewee has been made aware of this change and has been given a full

rundown of his or her rights and is able to fully exercise them (European directive 2012/48/EU).

2. Right of access to counsel

68. The right of access to counsel is one of the most essential safeguards against torture and ill-treatment. Not only does a lawyer's presence act as a deterrent against mistreatment or coercion and facilitate the undertaking of remedial action if mistreatment occurs, but also can protect officials facing unfounded allegations of improper conduct.

69. Access to counsel must be provided immediately after the moment of deprivation of liberty and unequivocally before any questioning by authorities.[18] Counsel must be present for all interviews, and for their entirety (see A/68/295). This right applies to, among others, detention on criminal charges, prisoners of war, criminal detention relating to armed conflict, detention of individuals considered to be civilian internees under international humanitarian law and administrative detention outside of armed conflict (see WGAD/CRP.1/2015).

70. The Special Rapporteur is concerned that, in many jurisdictions, access to a lawyer during questioning is routinely denied or unduly delayed until confessions or incriminating statements are elicited. The protocol must adequately reflect the prohibition on interviewing persons without counsel, except in compelling circumstances or when the interviewee gives his or her voluntary and fully informed consent to waive this right (see the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems; A/68/295; and E/CN.4/813 and Corr.1), and reiterate that access to counsel must be enjoyed by anyone deprived of liberty, regardless of whether the offence in question is considered "minor" or "serious".

71. Compelling circumstances denying access to counsel must be strictly defined in national law and correspond to situations in which there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of persons, or where immediate action by investigators is imperative to prevent the destruction or alteration of essential evidence or to prevent interference with witnesses. Even then, the questioning of suspects without a lawyer must be accompanied by appropriate safeguards, limited to what is strictly necessary to achieve its singular purpose (i.e., obtaining information to address the exigent circumstances) and cannot unduly prejudice the rights of the defence (European directive 2013/48/EU). Defence rights are in principle irreparably prejudiced when incriminating statements made during questioning in the absence of counsel are used for a conviction (see European Court of Human Rights, *Salduz v. Turkey*).

72. Where a person waives the right to counsel, means of verification should be employed to ensure that he or she received clear and sufficient information about the content of the right and the potential consequence of a waiver and to establish that the waiver was voluntary and unequivocal (see the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems). When a person

[18] See the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, adopted by the General Assembly in its resolution 67/187; and Human Rights Committee, communication No. 770/1997, *Gidin v. Russian Federation*, views adopted on 20 July 2000.

invoked the right to assistance of counsel during questioning, a waiver cannot be established by evidence that he or she responded to further questioning in the absence of counsel, even if formerly advised of his or her right to remain silent. In such situations, the interview cannot continue until the assistance of counsel is actualized, unless the interviewee initiates further communication with interviewers (see European Court of Human Rights, *Pishchalnikov v. Russia*).

73. The right to a lawyer entails the right to meet in private and consult and communicate in full confidentiality before any interview, which is essential to preserve defence rights and enable detainees to raise issues about treatment in custody.

74. The protocol should further provide practical guidance on the role, rights and responsibilities of lawyers in relation to questioning, including, for example, advice on — and a rundown of potential consequences of — exercising the right to remain silent. It must affirm that counsel must be physically present and able to intervene during interviews to protect the interviewee's rights and ensure fair treatment. Lawyers should be allowed to ask questions, request clarifications, challenge improper or unfair questioning and advise clients without intimidation, hindrance, harassment or improper interference. Lawyers cannot, however, prevent interviewees from answering questions that they wish to answer, reply on their behalf or otherwise unduly interfere with questioning.

75. The protocol should contain guidance on the right to free legal assistance. Many States regrettably still lack the resources and capacity necessary to provide legal aid (see the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems). In the absence of a sufficient number of certified lawyers and a full-fledged legal aid system covering all stages of deprivation of liberty, authorities should, as an interim measure, grant detainees the right to have a trusted third party present during questioning during initial custody (see CAT/OP/BEN/1). The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, while asserting that lawyers are the first providers of legal aid, confirm that other stakeholders, including non-governmental organizations, community-based organizations, professional bodies and associations and academic institutions, may step in to fulfil this function.

3. Right to remain silent

76. Persons arrested or detained on criminal charges must be informed of their right to remain silent during questioning by law enforcement in accordance with article 14 (3) (g) of the International Covenant on Civil and Political Rights. This right is inherent to the presumption of innocence and key to torture prevention efforts, given that interviewers respecting this right are unlikely to resort to abusive questioning methods. Suspects must be duly warned, at the beginning of every interview, that their words may be used in evidence against them. Persons' willing agreement to provide statements during questioning following this warning cannot be regarded as a fully informed choice when they were not expressly notified of the right to remain silent or when the decision was taken without the assistance of counsel (see European Court of Human Rights, *Stojkovic v. France and Belgium*).

77. Concern is expressed about the drawing of negative inferences from a person's failure to answer questions, and it is recommended that no inferences be drawn "at least where the accused has not had prior consultations with counsel" (see

CCPR/C/IRL/CO/3). The Rome Statute and the Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (Luanda Guidelines) expressly prohibit adverse inferences being drawn at trial from a suspect's exercise of the right to remain silent, finding that anything to the contrary may improperly imply that a suspect's silence amounts to an admission of guilt and compromise the presumption of innocence.

78. The right to remain silent should equally apply, as a matter of law or policy, to prisoners of war, criminal detention relating to an armed conflict, detention of individuals considered to be civilian internees under international humanitarian law and administrative detention outside of armed conflict. With regard to interviews of witnesses and victims in the criminal justice system, courts alone may compel witness testimony. As a preventive measure against coercion and a matter of good practice, witnesses and victims should not be obliged to answer individual questions by which they could incriminate themselves during interviews.[19]

4. Additional safeguards for vulnerable persons

79. Given that particular groups are more vulnerable during questioning, the protocol should contain specific provisions for, among others, children, women and girls, persons with disabilities, persons belonging to minorities or indigenous groups and non-nationals, including migrants (regardless of migration status), refugees, asylum seekers and stateless persons. The vulnerability of persons should be promptly identified for special consideration of their needs to be reflected in the conduct of interviews and implementation of additional safeguards.

80. With regard to the need to inform persons of their rights during questioning, additional safeguards are required for certain persons, with thorough explanations of the rights of children and persons with intellectual or psychosocial disabilities being provided directly to, among others, their parents, families, guardians or legal representatives (see general comment No. 35; and Inter-American Court of Human Rights, *Tibi v. Ecuador*).

81. A complementary safeguard is the presence of a support person during questioning, in addition to counsel. A child must never be subjected to questioning or requested to make any statement or to sign any document without the presence of a lawyer and, in principle, his or her caregiver or another appropriate adult whose presence is encouraged to help to prevent coercion, reassure the child and limit potential traumatization), at all stages of the investigation and proceedings (see the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems; and Committee on the Rights of the Child, general comment No. 10 (2007) on children's rights in juvenile justice). Persons who appear to suffer from psychosocial or intellectual disabilities should be assisted by an independent support person, whether a relative, legal guardian, mental health professional or social worker with relevant experience and training, during questioning.

82. Witnesses, victims, suspects and persons deprived of liberty who do not adequately speak or understand the language of questioning should be entitled to receive the free assistance of an independent, qualified and effective interpreter

[19] See Vivienne O'Connor and Colette Rausch, eds. *Model Codes for Post-Conflict Criminal Justice*, vol. II, *Model Code of Criminal Procedure* (Washington, D.C., USIP Press, 2008), art. 110 (1).

during interviews and, when necessary, during consultations with counsel (see International Covenant on Civil and Political Rights, art. 14 (3) (f)). Persons with sensory impairments likewise have the right to interpreters. When no interpreter is available, a person who knows the interviewee and is able to adequately communicate with him or her may be invited to act as one; alternatively, the interviewee should be asked and/or be allowed to answer questions in writing in his or her preferred language.

83. The interpreter's role during questioning is to facilitate communication neutrally and objectively. His or her presence serves as a safeguard against mistreatment and coercion. The protocol should provide practical guidance as to the role, rights and responsibilities of interpreters during the conduct of interviews and emphasize that the right to interpretation applies to the questioning of all persons who are arrested or deprived of liberty, including during armed conflict and in administrative detention (Body of Principles, principle 14).

5. Recording

84. The recording of interviews is a fundamental safeguard against torture, ill-treatment and coercion and ought to apply in the criminal justice system and in connection to any form of detention. Every reasonable effort must be made to record interviews, by audio or video, in their entirety. Where circumstances preclude or when the interviewee objects to electronic recording, the reasons should be stated in writing and a comprehensive written record of questioning must be kept. Accurate records of all interviews must be kept and safely stored, and evidence from non-recorded interviews should be excluded from court proceedings (see A/56/156).

85. Suspect interviews must be at least audio, and preferably video, recorded (see A/HRC/4/33/Add.3 and A/68/295). Video recorders should capture the entire interview room, including all persons present. Video recording discourages torture while providing an authentic and complete record that can be reviewed during the investigation and used for training purposes. It cannot, however, be used as an alternative to the presence of counsel (see CAT/C/AUT/CO/3 and A/HRC/25/60/Add.1). The Special Rapporteur acknowledges the financial implications associated with the use of video-recording equipment. The protocol may explore alternative solutions, such as limiting the mandatory use of audiovisual recording to interviews of suspects, vulnerable victims or witnesses.

86. Recording should not be limited to confessions or other incriminating statements. Whatever the format, several elements must be recorded during an interview, including: its place, date, time and duration; the intervals between sessions; the identity of the interviewers and any other persons present and any changes in individuals present during questioning (see Human Rights Council resolution 31/31); confirmation that the interviewee was informed of his or her rights and availed himself or herself of the opportunity to exercise them and confirmation of any voluntary waiver; the substance and content of questions asked and answers, in addition to any other information, provided by the interviewer or interviewers or the suspect (see the Luanda Guidelines, guideline 9 (e)); and the time and reasons for any interruption and time of resumption of the interview (rules of procedure and evidence of the International Criminal Court, rule 112 (1)).

87. The records should be made available to the interviewee and his or her counsel. The interviewee should have the opportunity to verify that the written

record, if used, accurately reflects his or her statements. As a matter of good practice, all persons present during questioning may be asked to sign the written record to attest to their presence and its accuracy. Audiovisual recordings must be clearly identified, properly labelled, safely stored and preserved. Destroying or tampering with records establishing proof of mistreatment should be criminalized under national law.

6. Medical examination

88. International standards provide for prompt and regular access to medical care for persons deprived of liberty. States are obligated to guarantee the availability of prompt, independent, impartial, adequate and consensual medical examinations at the time of arrest and at regular intervals thereafter. Medical examinations must also be provided as soon as a detainee enters a custodial or interview facility and upon each transfer. Prompt, independent, impartial and professional examinations in accordance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment must be carried out pursuant to allegations of mistreatment or any sign that mistreatment may have occurred (see A/68/295 and E/CN.4/2004/56). The well-established prohibition against medical personnel engaging, actively or passively, in acts that may constitute participation in, complicity or acquiescence in, incitement to or attempts to commit torture or ill-treatment (see CAT/C/51/4) merits recalling.[20]

89. Examples of other safeguards against mistreatment and coercion during questioning include ensuring that no interview occurs without direct or indirect supervision, among others by way of one-sided mirrors, live-feed or review of recordings. Save exceptional circumstances, strict national regulations must ensure that detained persons may not be subjected to questioning for more than two hours without a break and must be provided adequate breaks for refreshments and be allowed uninterrupted periods of at least eight hours for rest — free from questioning or any activity in connection with the investigation — every 24 hours.[21] Save in compelling circumstances, no interview should happen at night.

C. Accountability and remedies

90. Accountability is critical to preventing the recurrence of human rights violations. The protocol must reiterate States' obligations to combat impunity and ensure accountability and the provision of remedies for torture and ill-treatment committed during questioning.

1. Complaint mechanisms, investigations and sanctions

91. Victim of torture or ill-treatment must have access to impartial and effective complaint mechanisms and be protected from retaliation and reprisals. All

[20] See the Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment (General Assembly resolution 37/194); and the Declaration of Tokyo.

[21] See the report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 4 to 17 June 2009 (CPT/Inf (2011) 13).

complaints of mistreatment must be transmitted without screening to external independent bodies for prompt, impartial, thorough and effective investigation. Even in the absence of complaints, States have a duty to conduct investigations wherever there are reasonable grounds to believe that an act of torture or ill-treatment occurred in any territory under their jurisdiction (see Committee against Torture, general comment No. 3 (2012) on the implementation of article 14 by States parties; and A/68/295).

92. Where investigations confirm allegations of mistreatment, victims must be provided with effective remedies and redress, including fair and adequate compensation, and as full rehabilitation as possible. Those who encourage, instigate, order, tolerate, acquiesce in, consent to or perpetrate such acts of mistreatment must be brought to justice and punished in a manner commensurate with the gravity of crimes (see Human Rights Council resolution 31/31).

93. Law enforcement, intelligence and military officials who have reason to believe that torture or ill-treatment has occurred or is about to occur should report it to their superiors and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial powers, while medical professionals also have an obligation to report and document any signs of mistreatment that they observe (Nelson Mandela Rules, rule 34).

94. The obligation to report mistreatment should be enshrined in national law, with appropriate sanctions for non-reporting and protections for those who report.[22] The duty to report should be extended to violations of other standards and safeguards, including the prohibition against compelling detainees to confess, incriminate themselves or testify against others, and subjecting them to coercion, threats or practices impairing their judgment or decision-making capacities (Body of Principles, principle 7).

95. All violations, including of the right to be properly informed of one's rights and to legal assistance, must be impartially investigated upon complaint and subject to appropriate sanctions. The protocol should consider prospective remedies and sanctions, such as disciplinary or administrative action and obligation to undertake additional training, for breaches of standards and attendant procedural safeguards designed to prevent the use of coercive interviewing practices.

2. Exclusion of evidence

96. Statements, documentary or other evidence elicited through torture and ill-treatment are inadmissible in any proceedings, except against suspected perpetrators. The exclusionary rule is a non-derogable norm of customary international law. It is fundamental to uphold the prohibition of torture and ill-treatment by providing a disincentive to them. The rule applies to mistreatment of both suspects and third parties, including witnesses, and against evidence obtained in a third State, and regardless of whether the evidence is corroborated or is uniquely decisive for the case. The exclusionary rule applies in full to the collecting, sharing and receiving of any information tainted by mistreatment (see A/HRC/25/60).

[22] See the Code of Conduct for Law Enforcement Officials, art. 8, commentary.

97. The exclusionary rule extends to any form of coercion. Confessions of guilt are valid only if made without coercion of any kind (see American Convention on Human Rights, art. 8 (3)). The Luanda Guidelines recall that confessions or other evidence obtained by any means of coercion or force, including during incommunicado detention, cannot be admitted as evidence or considered as probative of any facts at trial or sentencing.

98. The exclusionary rule also applies to evidence gathered or derived from information obtained under duress (see Inter-American Court of Human Rights, *Cabrera García and Montiel Flores v. Mexico*). States must carry the burden of proving that confessions were obtained without duress, intimidation or inducements.[23] As a matter of best practice, the exclusionary rule should also apply to collecting, sharing and receiving information tainted by any form of coercion.

99. Coerced confessions are regrettably admitted into evidence in many jurisdictions, in particular where law enforcement relies on confessions as the principal means of solving cases and courts fail to put an end to these practices. The protocol must address the need to change the culture of tolerance and impunity for coerced confessions in such cases. National legislation must accept confessions only when made in the presence of competent and independent counsel (and support persons when appropriate) and confirmed before an independent judge (see A/HRC/13/39/Add.5 and A/HRC/4/33/Add.3). Courts should never admit extrajudicial confessions that are uncorroborated by other evidence or that have been recanted (see A/HRC/25/60). If doubts arise about the voluntariness of a person's statements, as when no information about the circumstances of the statement is available or when pursuant to arbitrary, secret or incommunicado detention, the statement should be excluded regardless of direct evidence or knowledge of abuse (see A/63/223).

100. National laws must provide for the exclusion of all evidence obtained in violation of safeguards designed to prevent mistreatment (see A/HRC/25/60), such as confessions or incriminating statements obtained in violation of one's rights to be informed of his or her rights and legal status before questioning, or duly warned that his or her words may be recorded and used in evidence against him or her. Evidence should also be excluded when access to counsel is unduly delayed or denied, or involuntarily waived; whenever specific safeguards applicable to the questioning of vulnerable persons are infringed; and when persons are denied adequate breaks and periods of rest during interviews save compelling circumstances. The protocol should account for situations where evidence or information is obtained in violation of preventive safeguards and the accused takes a plea without trial.

IV. Conclusions and recommendations

101. **The Special Rapporteur calls upon States to spearhead the development of a universal protocol aiming to ensure that no person is subjected to torture, ill-treatment or coercion, including any forms of violence, duress or threat. A protocol, to be developed in collaboration with relevant international and regional human rights mechanisms, civil society and experts, must be grounded**

[23] See the report of the Inter-American Commission on Human Rights on the human rights of persons deprived of liberty in the Americas (OEA/Ser.L/V/II.Doc.64).

in fundamental principles of international human rights law and foremost in the absolute prohibition of torture and ill-treatment. The first step in this process ought to be the convening of a broad public consultation designed to set the parameters for the collaborative development of the protocol by the relevant stakeholders.

102. The model promoted by the protocol must promote effective, ethical and non-coercive interviewing and be centred on the principles of presumption of innocence and the pursuit of truth. By moving away from accusatory, manipulative and confession-driven techniques to an investigative interviewing model, States will enhance not only the human rights compliance of their questioning practices, but also their effectiveness in solving crimes and keeping societies safe.

103. The protocol ought to elaborate on a fundamental set of standards and procedural safeguards designed to protect the physical and mental integrity of all persons during questioning. In this respect, the Special Rapporteur calls upon States to consider adopting the elements considered herein (without prejudice to other elements suggested by experts and stakeholders), which should apply, as a matter of law and policy, at a minimum, to all interviews by law enforcement officials and other intelligence, military and administrative bodies with an investigative mandate, as well to those conducted by private contractors and other proxy agents of the State. The protocol should also provide for accountability mechanisms and appropriate remedies for victims.